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JAN 13 2006

TECHNOLOGY CENTER 3600

In re Application of	:	
Holger Bellmann, et al.	:	
Application No. 09/166,496	:	DECISION ON PETITION
Filed: October 5, 1998	:	TO WITHDRAW THE
For: CONTROL DEVICE FOR A SYSTEM,	:	HOLDING OF ABANDONMENT
AND METHOD FOR OPERATING THE		
CONTROL DEVICE		

This is a decision on applicants' renewed petition to withdraw the holding of abandonment, filed in the United States Patent and Trademark Office (USPTO) on February 14, 2005.

The petition is **GRANTED**.

A review of the file record reveals that an Office action was mailed to applicants on December 16, 2003. Since a response was not received before the expiration of the six-month statutory period for reply, the application was held abandoned, and a Notice to that effect was mailed on July 27, 2004.

Petitioner contends that the December 16, 2003 Office action was not received.

There is a strong presumption that Office communication properly addressed and delivered to the United States Postal Services, was in fact delivered to the addressee. An allegation that the Office communication was not received must be overcome by a showing that it was not received.

The showing required to establish non-receipt of an Office communication must include all of the following requirements:


- (1) A statement from the practitioner stating the Office communication was not received by the practitioner;
- (2) A statement attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received; and

- (3) A copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement.

The docket records indicated above must include a copy of the list of all responses in the practitioner's office with the due date of March 16, 2004. See Notice entitled "Withdrawing the Holding of Abandonment When Office Actions Are Not Received," 1156 O.G.53 (November 16, 1993). The petition filed August 26, 2004 failed to meet requirement (3) above.

Applicants' renewed petition provides a copy of the docket record showing all actions due by practitioner's office at and around the due date of March 16, 2004. This evidence is acceptable proof of non-receipt as provided by 1156 OG 53.

The application is being forwarded to the Supervisory Legal Instruments Examiner with instructions to withdraw the abandonment, return the application to pending status and to redate and remail the Office action, originally mailed December 16, 2003, based on the reasoning in the case of *Delgar v. Schuyler*, 172 USPQ 513.

 for

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RAR/jwk: 4/20/05